

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 04-0062P
Sales and Use Tax
For the Years 2000-2002

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration- Ten Per Cent (10%) Negligence Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

The taxpayer wholesales automotive cooling systems, including radiators, radiator cores, radiator tanks, heater cores, and air-conditioning parts, tools, chemicals, and equipment. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales tax, interest, and penalty. The taxpayer protested the imposition of the ten percent (10%) negligence penalty. The taxpayer was given ample opportunity to schedule a hearing on the protest and/or submit additional information. Since the taxpayer did neither, this finding is based on the information in the file.

I. Tax Administration- Ten Percent (10%) Negligence Penalty

DISCUSSION

The taxpayer protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts

and circumstances of each taxpayer.

The taxpayer did not obtain and keep valid exemption certificates from several of its customers as clearly required by Indiana law and regulations. The taxpayer's inattention to this duty and failure to follow the department's instructions constitute negligence.

FINDING

The taxpayer's protest is denied.

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